

Sierra County Sheriff's Office

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Date: 1/27/2017

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Ref: Request for Policies and Procedures to officer-involved shootings and other use-of-force incidents.

SHERIFF'S DEPARTMENT		GENERAL ORDERS	
SUBJECT: USE OF FORCE		NUMBER: 2-6	
EFFECTIVE DATE: January 2015		REVIEW DATE: September 2017	
AMENDS/SUPERSEDES:		APPROVED: _____ Sheriff	

NOTE:

This rule or regulation is for internal use only, and does not enlarge an officer's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

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I. POLICY:

Officers are confronted daily with situations requiring the use of force to effect an arrest or ensure public safety. The degree of force used depends on what the officer perceives as reasonable and necessary under the circumstances at the time he or she decides to use force. Except for deadly force, the application of any degree of force is only justified when the officer reasonably believes that it is necessary

A. to prevent the escape from custody, make an arrest or an investigative detention of a person the officer believes has committed a crime; or

B. to defend himself or herself or another from what the officer believes is the use of

force while trying to arrest another, prevent his or her escape, or otherwise lawfully take the person into custody.

Facts or circumstances unknown to the officer shall not be considered in later determining whether the force was justified. The department expects officers to observe the following two guidelines in all applications of force:

- A. Employ the minimum force reasonably necessary to accomplish a legal purpose.
- B. Officers may resort to more severe methods of force to overcome either increasing resistance or an increasingly dangerous threat to public safety.

The escalation in the use of force typically follows a pattern: verbal control, compliance techniques (control holds), chemical weapons, defensive tactics (e.g., expandable baton), and finally deadly force. Officers must understand how to recognize increasing or decreasing levels of threat and respond appropriately.

When applying deadly force, officers' objective must be to stop or incapacitate the suspect, not to kill, unless no other choice presents itself. The objective of the use of any force is to overcome the suspect's resistance to an officer's lawful purpose: officers shall avoid unnecessary or excessive applications of force.

Police officers shall not unreasonably or unnecessarily endanger themselves or the public when applying this policy.

II. PURPOSE:

To establish guidelines governing the use of force and its limitations, and to clearly describe prohibited activities.

III. DEFINITIONS:

A. DEADLY FORCE INCLUDES:

- 1. The firing of a firearm, even though no intent exists to kill.
- 2. Any force applied in any manner by any means that could reasonably be expected to cause death or great bodily harm.
 - a. "Great bodily harm" means bodily injury which creates a substantial risk of death or which is likely to cause serious permanent disfigurement or loss, or extended impairment of the function of any body member or organ.

B. NON-DEADLY FORCE:

Force employed which is neither likely nor intended to cause death or serious physical injury.

C. FIREARMS:

Any weapon from which a projectile is forcibly ejected by an explosive.

D. REASONABLE BELIEF:

When facts or circumstances the officer knows, or should know, are such as to cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

E. SERIOUS PHYSICAL INJURY:

A physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, or impairment of the function of any bodily organ or limb.

F. EXCESSIVE FORCE:

Force is excessive when its application is inappropriate to the circumstances, resulting in serious physical injury or death to a suspect. The U.S. Supreme Court, in Graham v. Connor, recently set forth guidelines for determining whether force has been excessively applied: the primary concern is **reasonableness** in its application, as judged by the on-scene officer. Based on the reasonableness standard, the following considerations contribute to a determination of excessive force:

1. the severity of the crime;
2. the nature and extent of the threat posed by the suspect;
3. the degree to which the suspect resists arrest or detention; and
4. any attempts by the suspect to evade arrest by flight.

In evaluating the reasonable application of force, officers must consider their own age, size, strength, skill level with department weapons, state of health, and the number of officers opposing the number of suspects.

IV. PROCEDURES FOR APPLICATION OF NON-DEADLY FORCE:

The department trains officers in the use-of-force continuum, emphasizing the recognition of and response to increasing levels of threat. Most instances in which force is applied are non-deadly. Officers shall assess the incident to determine which technique will best defuse the situation and bring it under control. The following discussion reinforces key principles from training.

A. VERBAL CONTROL:

Verbal control refers to the manner in which the officer speaks to a person, which of itself can effectively manage a situation. Verbal control includes advice, persuasion, admonitions, or orders. The volume and tone of the officer's speech may also contribute to control without having to resort to another method of force. The department urges the use of verbal commands without the use of profanity or disrespectful or argumentative behavior.

B. COMPLIANCE TECHNIQUES:

At times, uncooperative people who refuse to be taken into custody may only respond to a combination of strength, leverage, take-downs, or control holds with sufficient force to make the lawful arrest without aggravating tension or a suspect's combativeness. The object of this level of force is to gain control and enforce the suspect's compliance while minimizing the risk of injury to officers, bystanders, or the person being placed in custody. Where lesser levels of force appear ineffective, officers may employ hands, fists, feet, knees, and so on in striking an adversary, according to methods sanctioned through training.

C. CHEMICAL AGENTS:

The use of chemical agents is restricted to situations where higher levels of force are unnecessary and lesser levels are inappropriate or ineffective. The only chemical weapon authorized for patrol personnel is the oleo-resin capsicum (OC) or "pepper spray." Chemical agents shall be used only to the extent necessary to overcome the resistance of the suspect, and within training standards. Specialized chemical agents, such as concussion grenades or tear gas, shall be used only by personnel trained in their application, and then only under direct orders of the on-scene supervisor upon consultation with the sheriff.

1. Chemical sprays shall not be used to threaten to elicit information or persuade people to comply with orders, nor will they be used on people who are handcuffed, secured, and properly in custody.

2. Keep the application to the absolute minimum required to effectively control the subject.
3. Do not use on persons who are sick, intoxicated or who are not in possession of their normal protective reflexes, (such as being able to turn away from the applied spray). NOTE: Applying a chemical agent to such persons can result in injury out of proportion to the threat they may present.
4. **If the use of tear gas is authorized by the on-scene supervisor**, observe the following:
 - a. These chemicals are used primarily in dealing with unruly crowds and armed barricaded subjects.
 - b. Gas grenades are used to disperse unruly crowds and induce the surrender of barricaded subjects when negotiations have failed.
 - c. Tear gas gun is used to fire projectiles into the area of an armed barricaded subject when the use of hand-tossed grenades would be unsafe or impractical.

D. DEFENSIVE TACTICS:

The department authorizes the carrying and use of the expandable baton as the only striking weapon for officers: all other forms of striking or punching weapons are prohibited for carrying or use, including but not limited to saps, blackjacks, slap-jacks, nunchakus and similar sticks, and brass knuckles. Officers must be certified in the use of the expandable baton. The weapon may be used in quelling confrontations involving physical violence where higher levels of force are unnecessary or inappropriate, and lesser levels are inappropriate or ineffective.

1. The expandable baton shall not be used to strike handcuffed individuals.
 - a. The expandable baton is mainly useful as an instrument to manage various control holds.

E. X-26 ADVANCED TASER

I. PURPOSE

The purpose of this policy is to set the guidelines for the Sierra County Sheriff's Department's policy regarding deployment of the X-26 Advanced TASER.

II. DEFINITIONS

1. X-26 TASER-The X-26 Advanced TASER manufactured by TASER International. The X-26 Advanced TASER is constructed of a high impact sonic welded polymer. It utilizes a 26 watt system and deploys 2 probes at the intended subject.
2. EMD-Electro-Muscular Disruption (EMD) is a direct involuntary contraction of the muscles that disrupts neuro-motor control.
3. DATA PORT-The X-26 Advanced TASER has a data port located inside of the unit above the DPM. This data port will be used to recover specific usage information that is saved every time the X-26 is deployed. This data ensures accuracy in incident documentation.
4. AFID- (Anti-Felony Identification Device) every time an X-26 Advanced TASER cartridge is deployed, 40 small confetti-like ID tags called AFIDS, are ejected. Each AFID contains the serial number of the cartridge deployed allowing staff to identify which officer deployed the cartridge.
5. CARTRIDGE-The X-26 Advanced TASER cartridge is a single use item that is identified by a serial number. The serial number of cartridges assigned to each deputy will be recorded. The cartridge is tamper resistant and is sealed with the AFID system in place.
6. DEPLOYMENT- Any use of the X-26 Advanced TASER when the use of force is needed.
7. CONTACT TASING-The use of the X-26 Advanced TASER without the cartridge or after the cartridge has been deployed.
8. REACTIVE CONTROL MODEL-This definition will be divided into three words. "REACTIVE" implies something else is controlling your

response. "CONTROL" is when you are confronted with a subject who is a threat to the community; your goal is to place that person under control. "MODEL" is an example or standard of excellence that should be the basis of performance. The REACTIVE CONTROL MODEL sets the standards for the use of force.

III. RESPONSIBILITIES

1. The Sierra County Sheriff is responsible for establishing the requirements contained within this policy.
2. The Under-Sheriff is responsible for insuring that his personnel are properly trained in the use of the X-26 Advanced TASER before allowing them to carry and use it.
3. Those Deputies certified to use the X-26 Advanced TASER will be responsible for the constant control and safety of any unit assigned to them.
4. All personnel are responsible for complying with the requirements contained within this policy.
5. The TASER Armor is responsible for performing inspections of the X-26 Advanced TASER each month for effective use. The Armor will also perform a yearly function test of the X-26 Advanced TASER and inspection of the cartridges for their 5-year expiration date.
6. The Deputies will be responsible for reporting of any deployment or discharge of the X-26 Advanced TASER.
7. Any deployment or discharge of the X-26 Advanced TASER whether intentional or accidental will be reported and verification through the X-26 Advanced TASER software will be conducted by the Armor.
8. All Deputies will have their own DPM that will be the responsibility of that officer.

IV. USE OF FORCE ISSUES

1. The use of the X-26 Advanced TASER constitutes a use of force.
2. The X-26 Advanced TASER is placed on the REACTIVE CONTROL MODEL at the same level of force as Oleoresin Capsicum spray.

3. The X-26 Advanced TASER may be deployed in any situation where verbal commands are not effective in controlling a subject.
4. The X-26 may be deployed to control a non-compliant subject or a dangerous and/or violent subject or when attempts to subdue the subject by the other conventional tactics have been or will likely be, ineffective at that time; or there is reasonable expectation that it will be unsafe for officers to approach within contact range of the subject or when deadly physical force does not appear to be justified and/or necessary.
5. The X-26 Advanced TASER is not intended to replace your firearm.
6. When the X-26 Advanced TASER is deployed in situations involving a deadly weapon(s), a back-up officer is to directly accompany the X-26 Advanced TASER user and be designated to utilize lethal force, if necessary, consistent with the laws of this state and departmental policies and procedures.

V. PROCEDURES

1. Only full time salaried deputies shall be certified to carry the X-26 Advanced TASER.
2. Each person carrying the X-26 Advanced TASER shall have a minimum of 2 cartridges.
3. The X-26 Advanced TASER may only be deployed in a manner consistent with the instruction received during certification and re-certification courses.
4. Whenever the X-26 Advanced TASER is deployed, the deputy shall inform his or her immediate supervisor. The supervisor shall take control of the X-26 Advanced TASER and turn it in to the Armor so the information stored within the unit may be down-loaded and reviewed. The deploying Deputy shall submit a written report concerning the incident.
5. Only qualified medical personnel shall remove any X-26 Advanced TASER cartridge probes that have penetrated into the subject. The subject may be looked at by the medical personnel or taken to the hospital for treatment.

6. All probes will be disposed of in a proper bio-hazard receptacle unless the deployment resulted in an in-custody-death. Whereupon they shall be turned over to the investigating agency as evidence..

V. DEADLY FORCE:

A. FIREARMS - GENERAL:

1. Firearms may be used:
 - a. In defense of the officer or others from what is reasonably believed to be an immediate threat of death or serious bodily harm; or
 - b. To prevent the escape of a fleeing felon whom the officer has probable cause to believe will pose a significant threat to human life should escape occur.
 - (1) In evaluating a "significant threat," the officer must reasonably believe that the person has either used deadly force in the commission of a crime or may inflict death or serious harm to the officer or others if apprehension is delayed.
 - (2) Where feasible, officers shall identify themselves and give a warning before shooting.
 - c. To kill seriously injured or dangerous animals when no other disposition is reasonably practical. A supervisor's approval should be sought when possible.
 - d. In routine firearm training or practice at an approved range.

B. SHOTGUN/ PATROL RIFLE:

1. The rules which govern the use of force as it pertains to a handgun shall also apply to the shotgun and patrol rifle. Care should be taken to assess the target and any potential for over-penetration on surrounding structures or vehicles when deployed.
2. Before beginning a tour of duty or immediately thereafter officers will inspect the shotgun and patrol rifle assigned to him/her for serviceability.

3. During regular firearms qualification, each officer will be required to demonstrate proficiency with shotgun and patrol rifle according to State and department guidelines.
4. The range officer or armorer will develop a shotgun maintenance schedule. He will clean and inspect shotguns according to schedule.
5. The general rules for the use of firearms above apply to shotguns and patrol rifles.

VI. LIMITATIONS ON FORCE:

The following acts associated with the use of force are prohibited.

- A. Firing into crowds.
- B. Firing a warning shot.
- C. Firing at or from a moving vehicle, except where the officer reasonably believes that:
 1. an occupant of the other vehicle is using, or threatening to use, deadly force by a means other than the vehicle; or
 2. a vehicle is operated in a manner deliberately intended to strike an officer or a citizen, and all other reasonable means of defense have been exhausted (or are not present), which includes moving out of the path of the vehicle, and the safety of innocent persons would not be unduly jeopardized by the officer's action.
- D. Firing into a building or through doors when the person fired at is not clearly visible unless officers are being fired upon from such building or through such door.
- E. Firing at a suspect when lesser force could be used to stop the action and affect the arrest.
- F. Application of choke hold or carotid control holds, except when the officer reasonably believes such holds are the only means of protecting him/herself or another person from an imminent threat of serious physical injury or death.
- G. Use of Streamlites or Kel-lites or other flashlights as batons. An officer may use a flashlight or other object designed for a use other than as a weapon ONLY to defend himself or another from imminent serious physical injury or death and then ONLY if departmentally sanctioned methods are not available or are impractical.

- H. Use of deadly force against non-dangerous fleeing felons, fleeing misdemeanor, or traffic offenders who pose no immediate threat of great bodily injury or death.
- I. Any use of force not reasonably necessary in the light of the circumstances confronting the officer.
- J. Any forcible enforcement action when off duty except in circumstances which seriously threaten life, valuable property, or public order.

VII. WEAPONS

A. DUTY WEAPON: While on duty, an officer shall carry a department issued or approved weapon, the standard issue is a .357 caliber Glock semiautomatic pistol. The department shall provide ammunition for the departmental issued weapon.

1. Any officer who wishes to carry a personally-owned weapon on duty must request permission, in writing, from the Sheriff. Weapons must be inspected and approved by the firearms instructor/armorer. In addition, ammunition must be approved by the department armorer and the officer must qualify with the weapon as well as with department-issued weapons. Officers must buy ammunition for their personally-owned off-duty weapons.
2. The Sheriff shall maintain a record of all weapons used by officers either on or off duty. The record lists weapon descriptions, ammunition type issued, date of issue, and information pertaining to qualifications. Officers shall annually review the records to ensure that they are up to date.

B. OFF-DUTY WEAPONS: Officers are encouraged, but not required, to carry a handgun when off duty. An officer who elects not to carry a handgun while off duty shall not be subject to disciplinary action if an occasion should arise in which he could have taken police action if he were armed.

1. (Exception) Off-duty officers while operating a department vehicle shall be armed with an approved weapon.
2. Officers who carry off-duty weapons must understand that in some social situations the carrying of a firearm would be inappropriate.

3. Officers who have consumed alcoholic beverages shall not carry an off-duty weapon under any circumstances.
4. All officers shall submit un-issued off-duty weapons to the firearms instructor for inspection before carrying them.

C. QUALIFICATION:

No officer shall carry or use any firearm, TAZER, chemical agent, or expandable baton unless he or she has received training in the use of the weapon and demonstrated proficiency in its use.

1. Officers who fail to pass the qualification shall be relieved of their police powers and immediately reassigned to non-enforcement duties.
2. Officers who have taken extensive leave or suffered an illness or injury that could affect the use of firearms shall re-qualify before returning to enforcement duties.

VIII. REPORTING USE OF FORCE:

- A. Officers shall document any application of force, except for those arising in training or departmental demonstrations.
- B. If officers have employed chemical weapons or any higher degree of force, they shall:
 1. Immediately notify the sergeant or lieutenant of any use of physical force.
 2. Submit a report to their supervisor within 72 hours describing the incident, substantiating the force used, and any medical services rendered.
- C. Depending on the seriousness of any injury resulting from the application of force, whether to a citizen or officer, the Sheriff shall notify, in case of death, the district attorney and the medical examiner.

IX. DEPARTMENTAL RESPONSE

- A. Assignment

Pending administrative review, any officer who has taken the life of another person will be removed from line-duty assignment. This action protects both the officer's and the community's interests until the situation is resolved.

B. Review

1. All reported uses of force will be reviewed by the supervisors to determine whether:
 - a. departmental orders were followed
 - b. relevant departmental policy was clearly understandable and effective to cover the situation; and
 - c. departmental training was adequate.
2. The sheriff may convene a board of inquiry to examine an incident in which force was applied.
 - a. The board of inquiry will also ascertain training and policy needs.

C. Investigations

1. Internal investigations of serious applications of force (to include deadly force, compliance techniques and incidents involving injury) shall be conducted. The administrative investigation shall be used to determine whether department policies were followed.
2. A criminal investigation of serious applications of force (to include deadly force, compliance techniques and incidents involving injury) shall be conducted. The criminal investigation shall be used to determine if laws were followed. The criminal investigation shall be conducted by the New Mexico State Police unless they are unable to assist. In the alternative, the local District Attorney's Office will assign an independent investigator to review the incident.
3. Investigations shall be conducted on all shootings (Fatal or Non-Fatal).

D. Psychological Services

Psychological follow-up of post-shooting trauma will normally be directed by the Sheriff whenever deemed appropriate. During an internal investigation, the department will do all within its power to avoid placement of a stigma on the officer who utilizes deadly force in performance of duty. Following a shooting resulting in a death, the officer shall not return to duty until a psychological evaluation has been conducted, a clearance has been issued and the officer has received counseling.